IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 57 of 2001
in
SPECIAL CIVIL APPLICATION No 7447 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANIL J UPADHYAY

Versus

STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 57 of 2001
MR IS SUPEHIA for Appellant No.
MR NAGESH SOOD AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-Anil Upadhyay, was working as an Armed Police Constable under the Police Commissioner, Vadodara. It was alleged against him that on 29.11.1984, the appellant-petitioner, under the influence of alcohol, visited the residence of one Champaklal Muljibhai Mistri, picked up a quarrel with him and abused him. Thereafter he was found in a drunken condition at Pratapnagar Police Head Quarter. He was taken to the SSG Hospital, Vadodara for medical examination and examined at about 12.00 hrs. mid night. The blood sample was sent to the chemical analyst. Report of the chemical analyzer shows that blood sample contained alcohol to the extent of .1035%, which was admittedly much more than the prescribed standard under the Prohibition Act. Criminal Case against him was registered for the offence under the Prohibition Act as Summary Case No.3432 of 1985 and he was tried before the court of J.M.F.C., Vadodara. However, on technical ground, the learned Magistrate acquitted by his judgment and order dated 31.12.1987. The learned Magistrate, while acquitting the petitioner-accused did not rely upon the report of the chemical analyzer only because the doctor had not sealed the container in which the blood sample of the petitioner was there by putting his personal seal. In respect of that the doctor has put up the general seal of SSG Hospital. In view of the acquittal recorded by the learned Magistrate on the technical ground, departmental proceedings were initiated against the appellant-petitioner by way of charge sheet dated 23/26.9.1988. After considering the evidence of several police witnesses and the report of the chemical analyzer held that the charge of consumption of alcohol was proved against the delinquent. However, the charge regarding visiting the place of complainant, Champaklal and taking up quarrel with him was not found to be true. On the ground of consuming alcohol, he was removed from service. Against which he preferred departmental appeal, which was dismissed. Revision application filed against the appellate order was also dismissed. Therefore, he challenged the order and preferred writ petition being Special Civil Application No.7447/89. The same was allowed by the learned Single Judge of this court (Coram : Miss.R.M.Doshit, J.) on 13.4.2000 and the order of removal from service passed by the Disciplinary Authority, which was confirmed in appeal and revision were quashed and set aside and he was ordered to be

reinstated in service as Armed Police Constable. The period spent under suspension was ordered to be period on duty. He was ordered to be paid all the consequential benefits of service, except the back wages on the principal of "no work no pay" and the said period was ordered to be treated as extraordinary leave without pay. Being aggrieved by this part of the order passed by the learned Single Judge denying back wages the appellant-original petitioner has filed this appeal.

#. At the outset, it may be stated that the Letters Patent Appeal filed by the respondent against judgment and order passed by the learned Single Judge reinstating the appellant-petitioner in service was dismissed at the admission stage by the Division Bench of this court as stated at he Bar by the learned counsel Mr.Supehia. In that view of the matter we are required to decide only this appeal filed by the appellant-petitioner.

#. Learned counsel Mr.Supehia for the appellant-petitioner relied upon the judgment of the Hon'ble Supreme Court in case of Union of India v K.V.Jankiram reported in AIR 1991 SC 2010 submitted that the learned Single Judge committed grave error in not awarding full back wages while setting aside the order of removal and passing order of reinstatement in service of the appellant-petitioner. He, therefore, submitted that this appeal be allowed and the appellant-petitioner be awarded full back wages.

#. From the judgment of the learned Single Judge it nowhere appears that any arguments were made by the learned counsel for the appellant-petitioner for awarding back wages. For claiming back wages one has to point out that he was not gainfully employed during the period he was out of the job. Nothing sort of it has been stated in the petition itself or at the time of the final disposal of the petition. It was a petition of 1989 which came to be decided only in April, 2000. In that view of the matter, we are not prepared to believe that the appellant-petitioner would have survived for 11 years without doing any job. He must have gainfully employed. That apart, to grant back wages is a sole discretion of the learned Single Judge and on peculiar facts of this case, if the learned Single Judge has thought not to award back wages to the appellant-petitioner, then no fault can be found with such order. In the instant case, serious allegations were made against the appellant-petitioner of consuming liquor while on service. He was lucky to be escaped from the criminal court on the technical breach. Though in the

Departmental Proceedings, case was found to be proved against him, the learned Single Judge of this court was of the opinion that when the report of the chemical analyzer was found to be not reliable by the Criminal Court, then the same could not have been relied upon by the Disciplinary Authority in the departmental proceedings. Therefore, on this technical ground only, the impugned order of removal from service was quashed and set aside. In such type of cases, there is no question of awarding back wages and in our considered opinion, the learned Single Judge has rightly not awarded the back wages on the principal of "no work no pay".

#. In view of the above, we do not see any reason to interfere with the part of the order passed by the learned Single Judge of this court refusing back wages to the appellant-petitioner while passing the order of reinstatement of service.

#. In view of the above discussion, this appeal fails and is hereby dismissed with no order as to costs.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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